

# ARIZONA STATE SENATE

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## 45TH LEGISLATURE FIRST REGULAR SESSION

### MINUTES OF COMMITTEE ON HEALTH

**DATE:** January 23, 2001                      **TIME:** 1:30 p.m.                      **ROOM:** SHR 2

**CHAIRMAN:** Senator Gerard                      **VICE CHAIRMAN:** Senator Nichols

**ANALYST:** Jason Bezozo                      **COMMITTEE SECRETARY:** Carol Dager

**INTERN:** Meghann Brennan                      **ASSISTANT ANALYST:** Kathy Seeglitz

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#### ATTENDANCE

#### BILLS

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<u>Committee Members</u>	<u>Pr</u>	<u>Ab</u>	<u>Ex</u>	<u>Bill Number</u>	<u>Disposition</u>
Senator Cirillo	X			SB 1073	DP
Senator Guenther	X			SB 1074	DPA
Senator Hartley	X			SB 1075	DP
Senator Hellon	X			SB 1087	DPA
Senator Solomon	X			SB 1105	HELD
Senator Verkamp	X			SB 1108	HELD
Senator Nichols, Vice Chairman	X			SB 1144	DPA
Senator Gerard, Chairman	X			SB 1146	DP
				SB 1147	HELD
				SB 1148	DPA

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#### GOVERNOR'S APPOINTMENTS

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<u>Name</u>	<u>Position</u>	<u>Recommendation</u>
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Chairman Gerard called the meeting to order at 1:41 p.m., and attendance was taken.

Attendees Sign-In Sheet (Attachment A)

## **CONSIDERATION OF BILLS**

### **SB 1105 – sudden infant death syndrome; protocols – HELD**

**Ms. Kathy Seeglitz, Health Committee Assistant Analyst**, explained that SB 1105 requires the Department of Health Services (DHS) to establish death scene investigation protocols for suspected sudden infant deaths and prescribes minimum protocol requirements. It also specifies that this act shall be known as Brandon's Law.

Senator Hartley showed a picture of her grandson, Brandon Boettcher. She then introduced Brandon's mother.

**Ms. Heather Boettcher** commented that last summer she researched for information on sudden infant death syndrome (SIDS). She started with the Internet finding the web site for the National SIDS Alliance. On this web site, a media alert was posted, requesting individuals to contact their local legislators to implement standard procedures for the investigations of sudden unexplained infant deaths. There are many web sites devoted to SIDS and their families. Before looking at the article posted by the SIDS Alliance, she had read many stories posted by families about their experience with SIDS and the investigations that ensued. There were many parents and caregivers that were treated with little compassion. The insensitivity that was displayed to them was done so through the investigations in a manner that made them the suspects of possible abuse.

Ms. Boettcher noted that on June 10, 1997, her son Brandon passed away. His death was sudden and unexplained. The investigation then ensued. She pointed out that she and her husband were made to feel like suspects and were accused of abusing their child. She stated that she remembers the events that occurred at that time, and she believes that everyone was working in what they thought were Brandon's best interest. Unfortunately, they had little regard for the best interest of the family. She asked that everyone consider the questions she was asked: 1) did you shake your baby; 2) did your husband shake your baby; and 3) did your caregiver shake your baby. When each of these questions is considered individually, they are harmless. They imply that there is still some suspect and that the act of abuse has not been proven and may not have occurred. However, when those questions are followed by "who shook your son," that brings this line of questioning under a different scope. The line of questioning implies that abuse did take place; that you or someone you know is responsible for these actions. She said that she prays that no one present has experienced the loss of a child. The loss of anyone close brings about questions about what could have been done differently. By asking questions of this nature, the parents and the caregivers of the child are made to feel that they could have prevented such deaths. It makes people feel that they may have caused the death.

Ms. Boettcher pointed out the numerous reports that were taken at the time of Brandon's death. She explained that she has reviewed these reports and noted numerous inaccuracies, not just from her accounts as to what happened, but also inaccuracies between reports.

Ms. Boettcher related that on the night of June 9, 1997 at approximately 12:30 a.m., she and her husband were working, when they received a message from the receptionist that the Glendale Police Department had called and said that their son had been transported to Thunderbird Samaritan

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Hospital. She said that she did not think it was possible that in the event of an emergency, the police would just leave a message. She said that she thought it was a joke. She was going to disregard the message until her husband suggested that they should investigate it. She tried to call the babysitter's house without success. After several tries, she called the Glendale Police Department. After being placed on hold for what seemed an eternity, she was told that her son was on his way to the hospital. When she arrived at Thunderbird Samaritan Hospital, one of the officers informed her that her son had apparently "rolled over and scooted himself into a corner and suffocated in the playpen." The report was going to be written as an accidental death. The officer felt he had no reason to stay. Brandon was transported to Phoenix Children's Hospital. After she and her husband arrived at Phoenix Children's Hospital and waited for an hour or two, the doctor explained that Brandon had suffered retinal hemorrhaging and that he would be contacting the police as well as Child Protective Services (CPS). She said that like any parent, she had many questions for the doctor. At one point, the doctor informed her that he felt it would be best if he did not answer the questions until she talked to the police. He said, "it is obvious we are trying to point fingers and we think you know who we are pointing the fingers at." She stated that she did not want to leave her son's side but felt the only way she was going to get any answers was to speak with the police.

Ms. Boettcher noted that after Brandon passed away, the detectives continue to request that she and her husband go to the station for further questioning. What they wanted was for them to take a polygraph test. The detective tried daily to reach them, until the Friday after Brandon's death. When he did reach her, she informed him that she had an appointment that afternoon with the mortuary and wanted to arrange another time to go to the station. His response was that an appointment at the mortuary was unnecessary because he had not released the baby's body yet. When she asked why, he said that he needed to hold the body for a day or two because sometimes bruises develop after the fact. They had already had his body for four days. She said that she was distraught and called her parents. Her father, seeing this for the intimidation tactic that it was, called the police department to straighten things out. Brandon's body was released and services were held the following Monday. She explained that the babysitter was unable to attend the services. The police informed the sitter that she should not have contact with Ms. Boettcher or her husband, because all three were suspects and the police did not want them talking to each other.

Ms. Boettcher pointed out that the investigation lasted four months. She said that there were many stories that she could relate to show how they were treated insensitively, with little compassion, and occasionally with cruelty. She explained that their case is riddled with mistakes, some involving human error, poor judgement, and most importantly lack of communication. There are numerous discrepancies among the dozens of police, hospital, and medical examiner reports. Different officers' reports of the events that occurred on the evening of June 9 are inconsistent with each other. When the hospital sent for Brandon's reports, they received his twin brother Brian's report, an error that the hospital did not notice, but she found while going over the reports several months later. The medical examiner's office reported that Brandon was on life support for three days, when he was actually there for only 19 hours. These types of discrepancies only hinder an investigation. She said that she believes many of the obstacles they faced could have been avoided with proper training and counseling.

Ms. Boettcher noted that this bill offers to broaden legislation already in effect. It proposes to establish standardized investigation protocol not just for law enforcement but for medical personnel as well. Establishing a formal protocol and additional training in respect to SIDS and the interpersonal communication between all involved in such cases is imperative to the success of these investigations. She emphasized that their goal is not to protect those who truly are guilty of child abuse but to expose them. With a standardized protocol, this is even more possible. It will allow for

fewer mistakes while protecting the innocent from unnecessary suspicion and accusations. She stressed that this is her goal and why she approached her local legislator, my mother, Senator Hartley. She pointed out that this should not discredit her as a constituent of this legislature. This bill as presented far exceeds her expectations and hopes. It encompasses more than her concerns and broadens the existing laws in a way that can benefit the state and more importantly, our children. The legislators have the power to enact this legislation and to show the children and families of Arizona that the legislators are truly concerned with their well-being and discovery of the truth, while being compassionate to their needs.

Senator Gerard questioned that at first the police officer said the way the baby was found, it was determined the death resulted in SIDS. Ms. Boettcher replied that when she first arrived at Thunderbird Samaritan Hospital, an officer informed them that it look as if the baby had rolled over into the corner and suffocated. Senator Gerard asked about the doctor later saying that he had detected retinal hemorrhaging. Ms. Boettcher answered "yes." Senator Gerard questioned, "that is when everything changed." Ms. Boettcher replied "yes." Senator Gerard queried that subsequently, they did not find any retinal hemorrhaging. Ms. Boettcher explained that there was retinal hemorrhaging. Senator Gerard noted that is usually tied to the shaken baby syndrome and questioned if she could see why they would want to look into that. Ms. Boettcher replied that she could if there was more evidence supporting abuse. Senator Gerard asked about the officers questioning if anyone in the family shook the baby and wondered if this had taken place at the hospital or later in the investigation. Ms. Boettcher replied that the questions were asked while her son was in intensive care. Senator Gerard asked if Ms. Boettcher was allowed to see her son. Ms. Boettcher responded that she was taken from her son to be questioned. Senator Gerard questioned if the boy had a twin. Ms. Boettcher replied that Brandon was a twin and the police asked that the other twin be examined. Senator Gerard asked if they had taken the other baby away from her. Ms. Boettcher replied "no."

Senator Hartley explained that the medical records indicated that there was no notation or retinal hemorrhaging at the time the baby was examine at Thunderbird Samaritan Hospital. It was noted at Good Samaritan. It is logical that during transport and resuscitation attempts that the retinal hemorrhaging could have taken place. Upon his arrival at Children's Hospital, a CT scan was taken which showed no brain stem hemorrhaging but did show some edema of the brain, which is considered secondary to lack of oxygen. They did not have the medical evidence necessary to continue going along the route that they did.

Senator Cirillo asked if there was some point, and how long into the process was this point, where the police told the family that they had completed the investigation and they were satisfied the parents and babysitter were no longer suspects. Ms. Boettcher said that the officers on the night of the death at the hospital had told her and her husband that they were not considered suspects. She pointed out that after the babysitter passed a polygraph the following morning, the police told the Boettchers that they were then considered suspects. The police did not tell them the case was closed until four months later.

Senator Nichols questioned if she had ever taken a polygraph. Ms. Boettcher said that the police had requested that they take the test. She said that she was not able to go when they requested because she had an appointment with the mortuary. After the funeral arrangements, her son Brian placed on a monitor and was admitted to Los Ninos Hospital for observation because he had experienced some events that set off the monitor. While they were at the hospital, the detective had asked for her to take the polygraph test. She asked if she needed to bring her attorney. The detective indicated that

would be wise and to have the attorney contact him. Ms. Boettcher explained that she had not heard from the detective until they were told the case was closed four months later.

Senator Hartley noted that she was at the hospital with her daughter because the second twin was displaying symptoms of sleep apnea. She said that she thought it was cruel that the officer called her daughter at that time and insisted that she take the polygraph. She indicated that they offered to have the police come to their home so her daughter and her husband would have family support when they were interviewed. She indicated that she was willing to meet the police and they said that was unacceptable. They wanted her daughter and her husband separately at the station. At Los Ninos, the officer made the statement that anyone who had been alone with the boys 48 hours prior to the event would be considered suspects.

**Dr. Mary Rimsza, Arizona Chapter American Academy of Pediatrics and Arizona Child Fatality Review Team**, stated that she supports this bill. She said that she believes the short protocol that has been developed by the Arizona SIDS Alliance, if completed by all law enforcement would greatly help in determining the causes of unexpected deaths in infants and help prevent further deaths. The Arizona Child Fatality Review Team reviews every child death in Arizona each year and has done so for the past five years. Over that period of time, the number of deaths due to SIDS has fortunately decreased from 71 to 36 a year. When these deaths are analyzed each year, the data is often incomplete to make an assessment about the preventability of a death due to the failure to complete the protocol that has been in existence for ten years. Law enforcement has improved over the years; initially over 40% of the reports were not completed. Currently, only 28% of the reports are not completed.

Dr. Rimsza indicated that with the passage of this bill, she believes they can make certain in every case a protocol would be completed that would assist the review team. If an appropriate investigation is not done at the scene, sometimes they never know what causes a child's death. It could be a suffocation, SIDS, or a medical problem. A simple, one-page form is not too much ask of investigating agencies at the time of the child's death. It is important for the family not only to know for sure why their child died, but for future children. Some of the conditions that can be confused with SIDS are hereditary and would be important to know. For example, in this case, does the other sibling need to be monitored or other tests be done.

Dr. Rimsza said that she also feels very strongly as a pediatrician that every family who loses a child should be treated respectfully at the time of the child's death. They know that when a child is found not breathing in the first year of life, overwhelmingly it is going to be SIDS. It makes sense then that the family be treated as if their child has died of a natural cause rather than be accusatory at the time.

Senator Nichols noted that Dr. Rimsza is well known and well respected as an advocate for children. He said that he understands that law enforcement officials are concerned about this bill. He asked if the procedure in the bill would diminish law enforcement's ability to do their job. Dr. Rimsza replied that she feels completing this form would actually help law enforcement because it lists some questions that they should be asking to help determine if the death was accidental, due to natural causes, or due to a homicide. It is a simple form that has been modified from a federal form that a group of physicians in Arizona have developed as an easy way to assist in determining the cause of death.

Senator Nichols reiterated that as an advocate for children and a pediatrician, it is Dr. Rimsza's opinion that this form would not deter law enforcement; rather it would assist them in doing their job. Dr. Rimsza replied that she does.

Senator Cirillo noted that there are also adults who die with unexplained causes. He said that he believes that in most of those cases, an autopsy is performed. He asked if she would be receptive to that requirement be included, that if there were doubt, an autopsy should be done. Dr. Rimsza responded that as a pediatrician, she feels that every child who dies unexpectedly should have an autopsy. The diagnosis of SIDS cannot be made without an autopsy.

Senator Hartley distributed a packet that included the selected statutes pertaining to SIDS (Attachment B). She noted that the items underlined led to how they developed the protocols and to whom they should pertain. In every case, law enforcement is there. The next sheet explains the Sudden Infant Death Syndrome Program (Attachment C). This report is from the advisory committee that has been set up at the Department of Human Services (DHS) to make recommendations. Next is a memorandum from DHS to medical examiners (Attachment D), which identifies the Infant Death Investigation Checklist (Attachment E). This is the checklist that should be used by law enforcement. She pointed out that in Brandon's case, one officer used it, the other did not which resulted in some of the discrepancies.

Senator Hartley noted that currently in statute, there is an advisory committee consisting of one county medical examiner, one licensed professional nurse, one licensed physician, one Arizona law enforcement officer, state fire marshal or designee, two persons who have expertise in SIDS, two representatives from the Arizona SIDS Alliance, and the medical director of the office of emergency medical services. She emphasized that law enforcement was participating in the development of the protocols. This bill is about mandating that the protocols be followed. They have been out there but have not been used in a uniform manner. Also enclosed are several letters of support (Attachment F). Senator Hartley explained that they are not looking at letting abuser get away. In 98% of the cases, if this protocol was used, the abusers would be caught without hurting the innocent.

Senator Verkamp stated that it sounds like there are existing protocols but another part of the language in the statute says that these protocols shall direct the investigator to question the infant's caretakers in a manner that is nonaccusatory and that will illicit the most information. He said that he was concerned about the word "nonaccusatory" because there is a gray area when using that type of language. It raises questions as to what is nonaccusatory. Dr. Rimsza responded that she has not been involved in investigating for over two decades. She indicated that she has always asked her questions in a nonaccusatory fashion. She does not feel that asking them in a nonaccusatory fashion will prevent her from getting the truth. Senator Verkamp asked what she felt was nonaccusatory. He suggested that to ask a question about the case, an officer would have to get into some area that would be accusatory. Dr. Rimsza answered that she defines nonaccusatory as asking open-ended questions about what happened or what the circumstances were.

Senator Cirillo asked if Dr. Rimsza would consider it accusatory if a physician who did the autopsy said there was retinal damage, would it be accusatory if the officer then asked for an explanation. Dr. Rimsza replied that she would not consider that accusatory. There is information that the police would like additional clarification.

Senator Gerard noted that defining terms in statutory language is critical. She related that when a 911 call is received and the first one on the scene is a police officer, they are not medically trained and are not qualified to determine if the baby's death is SIDS. She said that it seems to her that the protocol should be one of unexplained infant deaths. By putting it under a SIDS protocol, the judgement is already being made. Dr. Rimsza replied that may be correct. It might be more appropriate to call this protocol, a protocol for the investigation of unexpected infant death. It will

often turn out to be SIDS. Reading through the questions, there are a variety of conditions that might be confused with SIDS.

Senator Gerard noted that Dr. Rimsza sits on the Child Fatality Review Board. Dr. Rimsza replied that she is currently the chairman of that board. Senator Gerard asked if she had done autopsies. Dr. Rimsza said that she is a pediatrician and does not do autopsies. She said that she has interviewed parents many times when there has been an unexpected child death. Senator Gerard questioned the inconsistencies of law enforcement in gathering the information. Dr. Rimsza explained that the reason she would like to see this as a mandatory requirement, because although the majority of police follow the protocol, there are those who do not. She indicated that it would be helpful if there were a regular format to follow.

Senator Guenther stated that this protocol is in Title 36 and questioned if there is some other portion of Title 36 that requires law enforcement, medical personnel, or anyone else to follow the protocol. Senator Gerard said that is one of the shortcomings of the bill.

**Kipp Charlton, Arizona SIDS Alliance**, explained that he favors the bill. The protocol was developed by his committee and he feels it has been used well and effectively, although inconsistently. He mentioned that the purpose of the bill is to ensure that the protocol is used consistently. He noted that he has reviewed most of the SIDS cases in Arizona and stated that the Phoenix Police Department does a good job of following the protocol. However, that is not always the case in some of the smaller jurisdictions.

Senator Gerard questioned what the probability is of the unexplained infant deaths being caused by SIDS. Mr. Charlton said that he does not have the exact number. Over the last few years, a number of the deaths were found to be caused by an undetected respiratory virus. Senator Gerard asked if he could safely say that the majority of the cases are explainable due to some type of condition and not considered abuse. Senator Gerard asked if the protocol is appropriate for any sudden unexplained infant death, even if foul play is suspected. Mr. Charlton explained that the autopsy would make it clear if foul play was the cause, then investigators can ask the harder questions. He said initially they do not have to ask those potentially upsetting questions. Senator Gerard said that the members concern is those children who have died from abuse, the abusers do not deserve being treated with respect. Law enforcement at the scene must make those calls. No one who has done something to a child should get away with it. Mr. Charlton replied that the protocol would not hamper a criminal investigation. If the autopsy does show that there is a high probability of child abuse, the officer can go back and ask those questions. Senator Gerard asked even if the death is attributed to SIDS, there still would be an autopsy. Mr. Charlton explained that in most states, any child who dies under the age of 12 months would have an autopsy. Senator Gerard noted that one of the concerns of the police about this proposal is that a crime scene would be treated differently if it were SIDS as opposed to a crime scene. Mr. Charlton said that he could not speak to that, but knows that the Phoenix Police Department uses that protocol without having any difficulty in making that distinction.

**Eric B. Edwards, Legislative Liaison, Arizona Association of Chiefs of Police**, explained that some valuable concerns and important issues have been raised. On behalf of law enforcement, they do have some concerns about the bill. In most cases, SIDS deaths are not treated as homicides. When a death is treated as a homicide it is because there is medical evidence that there may be an issue that law enforcement should look at. Obviously, if they fail at that point, they would be negligent in doing their job. The reason they are concerned with the bill is because it requires a protocol from DHS. DHS is very good at what they do, however, their job is not criminal investigations, that is the

job of law enforcement agencies. DHS promulgating a protocol that is required use for law enforcement is similar to asking the police to promulgate a protocol for hospitals.

Mr. Edwards indicated that they are willing to work with everyone involved. He said that a protocol does exist and all the agencies do use it. There is nothing in the bill that says that they have to use the protocol. However, since it is a statutory requirement, they fear that if they do not follow the protocol exactly, it could result in suppression of evidence, dismissal of cases, or a suspect going free.

Senator Guenther suggested that while it is a protocol and law enforcement feels obligated to follow the protocol, DHS has no authority over law enforcement. There is no legal requirement that law enforcement must follow the protocol, and the protocol is not limiting. It is there to gain minimum information at the scene that might be usable by other people to explain an unexplained death. Mr. Edwards noted that as an attorney for the Phoenix Police Department he has discussed this issue with other prosecutors and concluded that if the police fail to follow the protocol specifically the court, looking at this statute, may determine that the only remedy may be dismissal of a case. He said that he would have an extreme fear in advising officers within the Phoenix Police Department and other agencies to go beyond the protocol because of the potential for suppression or dismissal if they are going beyond the protocol or the language in the statute where it says the custodial person must be treated in a nonaccusatory manner. That is another one of their concerns. What if the person does become a suspect or if there is potential reason to believe that it could be a homicide but it is still suspected of SIDS, law enforcement cannot treat them in an accusatory manner or suppression could be the result.

Senator Guenther agreed that the word "accusatory" is a gray area. Perhaps as this bill goes through the process that can be addressed since it raises questions. He said that he does not understand the authority that DHS has unless the legislature specifically gives that authority. Mr. Edwards agreed and said that he does not feel there is any specific authority. Senator Guenther noted that if anyone did have the authority to tell law enforcement what to do, it would be the courts. They are the experts at constitutional law. He said that he did not want to create a monster, but does want to make the investigations of unexplained infant deaths more uniformed and focused. Mr. Edwards agreed and said that the statutory basis is not the correct way to do that. He said that he would be willing to work with all the parties that have concerns and address those concerns.

Senator Gerard said that she believes that most police departments have protocols in place for different types of investigations. Mr. Edwards said that is correct, it is his understanding that protocols have been done in all counties. Senator Gerard asked if he could explain how those fit with the commission's protocol. Mr. Edwards replied that he is not an expert at how that fits. He said that he knows they exist and the agencies follow them.

Senator Hartley commented that she takes great exception to the issue Mr. Edwards was raising that if the police do not follow the protocols it would let someone off the hook on a technicality. In fact, this protocol only deals with SIDS death, once it is determined it is not a SIDS death, this protocol has no impact on an abuse case. Senator Gerard stated that if the police cannot make that decision when they get to a crime scene, they will have to follow it from the time they show up until they determine whether it is SIDS, abuse or neglect death. Senator Hartley countered that once it is determined that it is a non-SIDS death, the protocol is not relevant to the criminal prosecution. Senator Gerard stressed that critical evidence could be lost in that space of time. Senator Hartley noted that Mr. Edwards stated that this is happening in all 15 law enforcement agencies. In this specific case, one police officer used the protocol at the scene and the other officer did not. There was no consistency

within the department. She mentioned that the argument that failure to use the protocol would result in the suspect getting away is irrelevant because it would no longer be a SIDS case.

Senator Solomon asked if there are any other states that have codified such protocols. Mr. Edwards replied that he does not know. Senator Solomon indicated that the part of the bill she has a problem with is the word “nonaccusatory.” She said that she does not know what that means, and questioned if the basis is how a person perceives the question. She asked if that is the portion of the bill that is troubling for law enforcement. Mr. Edwards replied that the protocol being promulgated by DHS and the potential that they see for the courts to apply that in cases is one of their concerns. However, the “nonaccusatory” language is the single most offensive. He noted that there are homicides of infants that do not show signs of violence that a criminal investigator would be able to tell at the scene. By not being able to gather the evidence, asking questions, and even reading the Miranda Rights could be considered accusatory manner. If the police are not able to do that any statements made may later be suppressed under the 5<sup>th</sup> and 6<sup>th</sup> amendment rules. There are major concerns with that language.

Senator Hartley noted that in May, 2000, New Jersey passed a similar bill, as well as California. Glenn Davis worked closely with the people who drafted the legislation in California. She pointed out that there is a police protocol for sex offenders. They do not use the word “nonaccusatory” but “impartial.” If that courtesy is extended to sex offenders, they certainly should give similar courtesy to family members who have lost an infant suddenly. It does not seem appropriate that this discussion is taking place regarding the word “nonaccusatory” when it is already in protocol for sex offenders. Senator Gerard explained that there is a big difference between “nonaccusatory” and “impartial.”

Senator Guenther asked what would give DHS the authority to require that law enforcement agencies when investigating unexplainable infant deaths would use this protocol.

**Rose Conner, Assistant Director, Department of Health Services,** explained that the bill gives the authority to establish the protocol, however, DHS has no jurisdiction over the completion or the follow through of the protocol by any police jurisdiction.

Senator Gerard questioned if there is anywhere in state statutes where one agency is asked to develop something that another agency is going to have to implement. Ms. Conner replied that she could not answer that question but would have staff research the information.

Senator Hartley asked for additional background on how law enforcement has played a role on the advisory council and why uniformity would enhance the work that has been done over the past decade. Ms. Conner responded that DHS has worked in collaboration with SIDS Advisory Council, SIDS Alliance, the County Medical Examiners Association, and members of the Arizona Law Enforcement Advisory Council to develop the infant death investigation checklist. This checklist would provide a standardized assessment of the death scene for unexplained infant deaths. The protocol was developed in 1995 and has been used by first responders and the responses to the protocol have been positive in the past. The first responders have found that having a guide and a checklist provides an ability to complete the necessary tests associated with the investigation objectively and assists them in dealing with the difficult circumstances that are inevitable at the scene. The medical examiners have found the protocol helpful in assisting them in making differential diagnosis in these cases. The Child Fatality Review Board has determined that the number of unknown cases of death and sleep positions have decreased since the protocol has been established.

Senator Hartley said that she is willing to work with law enforcement in regards to language in order to alleviate their fears that anyone would get off on a technicality involving the protocol.

Senator Gerard said that she feels this bill would have difficulty passing out of committee today. It should be held and worked on or put it in a subcommittee. Senator Hartley said that her preference would be to hold the bill, work on it, and bring it back. Senator Gerard said that everyone would probably be more comfortable if the word “nonaccusatory” was replaced with “impartial.”

Chairman Gerard noted the following were present in support of the bill: **Sue Braga, Executive Director, American Academy of Pediatrics; and Rory Hays, Attorney, Arizona Nurses Association.**

Chairman Gerard noted the following were present in opposition to the bill: **Edwin Cook, Executive Director, Arizona Prosecuting Attorneys Advisory Council; and Jerry Glanoau, Special Assistant County Attorney, Maricopa County Attorneys Office.**

### **SB 1074 – children’s health insurance; requirements; study – DO PASS AMENDED**

**Meghann Brennan, Senate Health Committee Intern,** explained that SB 1074 replaces the six-month waiting period for eligibility for the children’s health insurance program (CHIP) with the authority of the Director of Arizona Health Care Cost Containment System (AHCCCS) to prescribe rules for a waiting period.

Senator Cirillo recalled the debate when the Kids Care bill first came through the legislature and the discussion of the six months waiting period, he said that he recollects that the purpose of Kids Care was to take care of uninsured children. It was not to let people who are insured to drop their insurance and then come under this program. Maybe the six-month waiting period was the way to do that and he said that he does not feel that the concern has diminished.

Ms. Brennan noted that there is a nine-line Solomon amendment dated 01/22/01 at 10:47 a.m., which has a clarifying change regarding people who are involuntarily dropped from their insurance.

Senator Gerard pointed out that at this level of poverty hardly any employers offer health coverage for their employees. At the time Kids Care was first adopted, the federal government encouraged having something in the statute to prevent “crowd out” from occurring. Since then the federal government has eased up on that requirement, allowing the states to make this change now.

Senator Solomon explained that according to the research, there has not been a “crowd out” situation anywhere in the country.

**Betty Jane Rector, Arizona Interfaith Network,** stated that she has enrolled 3,000 children in the Kids Care program in the past two years. In the course of this work, they have identified many other children who are without insurance because of various circumstances, but are ineligible to register for Kids Care due to the waiting period. Many parents who have had to drop their insurance because they could not afford it, are fearful of any possible medical problems that could occur during the waiting period. She said that she feels it is cost effective to insure children through the Kids Care rather than hope that no serious injury or illness occurs. These children come from families with limited means, thus the emergency room becomes the primary care physician in many cases. She stressed that the lack of insurance is not a good practice.

**Senator Nichols moved SB 1074 be returned with a DO PASS recommendation.**

**Senator Nichols moved the nine-line Solomon amendment dated 01/22/01, 10:47 a.m. be ADOPTED. The motion CARRIED by voice vote. (Attachment G)**

**Senator Nichols moved SB 1074 be returned with an AS AMENDED, DO PASS recommendation. The motion CARRIED with a roll call vote of 7-0-1. (Attachment 1)**

Chairman Gerard noted the following were present in support of the bill: **Richard White; Joseph W. Miller, EVI; Robert L. Bounton, Arizona Interfaith Network; Margaret Grannis, Shepherd of the Hills; Jan Holt, EVI; Frank A. Patzer, Shepherd of the Hills; Janice and Leonard Rayman, East Valley Interfaith Project; Beverly Rogers, Arizona Interfaith Network; Chris Herstam, Phoenix Children's Hospital, United Way of Tucson, and Tucson Medical Center; Louis Grannis, Shepherd of the Hills; Ruth Brunton, Home Economist; David Landrith, Vice President, Arizona Medical Association; Phil Lopes, Executive Director, Arizona School-Based Health Council; Barbara Burkholder, Executive Director, Arizona Public Health Association; Dr. Barbara Smith, Pediatrician, Arizona Chapter, American Academy of Pediatrics; Sandy Junck, Children's Action Alliance; A. Carter Rogers, Arizona Interfaith Network; Diane Ross, Assistant Director, AHCCCS; Sue Braga, Executive Director, American Academy of Pediatrics.**

#### **SB 1073 – AHCCCS; county contribution – DO PASS**

**Jason Bezozo, Senate Assistant Research Director**, noted that SB 1073 replaces the fixed county contribution rates for the Arizona Health Care Cost Containment System (AHCCCS) acute care program by phasing in, over a two year period, rates that are based on each county's population. Mr. Bezozo distributed and explained a report entitled "County Acute Care Contribution" (Attachment H).

Senator Cirillo questioned why there was an impact to the general fund and why any county who has an increase is held harmless. Senator Gerard asked what the impact is on the general fund. Mr. Bezozo replied that for 2002, the impact would be \$2.7 million, and for 2003, it would be \$6.7 million. In future years, the amount would fluctuate according to the population growth. Senator Gerard indicated that no one gets hurt and some are winners. Senator Solomon pointed out that some of the counties are not really winners, since for the past decade they have been losing. She said that she feels certain counties are catching up.

**Michael Racy, Lobbyist, Pima County**, stated that 20 years ago, factors were put into statute that were multiplied by the total county contribution to the AHCCCS program. Those factors were based on a rough estimate by the Auditor General of what counties were spending on health care prior to institution of the AHCCCS program. That was a system that was never intended to stay in place for more than a couple of years. It was intended to be the transition from the county funded system to the state AHCCCS system. During those transition years, everyone would continue to spend what they had been spending, no one would have to spend dramatically more or less. After those transition years, a new formula would be put in place that would adjust over time. The allocation formula has never been addressed. In 1998, the legislature updated that formula and phased in, over a four-year period, a new formula based on utilization (cost of services provided). This bill proposes to do the same change to a dynamic formula based on population rather than utilization because it is similar to draft and the outcome is almost identical in both cases. If the population mix from county to county changes, it will affect how much a county contributes. In the first year, nine counties are held

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harmless and six counties have their contributions go down. Those six counties have been subsidizing the other nine counties for 20 years. In the past, when some of these distribution formulas were updated, the Legislature determined that the small counties would be held harmless. In some of these cases, there are some anomalous outcomes because of the way the original factors were set. The Navajo and Apache counties have dramatically different outcomes. Apache County would have their contribution almost triple and Navajo County would have their contribution almost quadruple. As a practical fiscal matter, it would bankrupt those counties, and the state will make up those subsidies.

Senator Gerard asked who developed the formula. Mr. Racy responded that it was drafted by Pima County along with the other counties based on the model used in the long-term care formula. He said he expects that this will go through the appropriations process.

Senator Nichols questioned if the counties that had overcontributed for more than 20 years have been penalized for overcontributing. Mr. Racy replied yes. Senator Nichols asked how much Pima County has overpaid in the past 20 years. Mr. Racy answered that the estimate is between \$50 to \$70 million.

Senator Gerard said that part of the problem is that the counties do not always have accurate numbers to report and Pima County provided services to a high level of poverty than other counties.

Senator Nichols noted that once the state adopts the standard, they would hope that Pima County would not be penalized for past generosity. He indicated that the \$70 million represents a down payment for approximately 10 years.

Senator Cirillo pointed out that to come up with a new formula is fine, but to come up with a formula where the state ends up picking up 10% of the cost is wrong.

**Senator Nichols moved SB 1073 be returned with a DO PASS recommendation.  
The motion CARRIED with a roll call vote of 6-2-0. (Attachment 2)**

Chairman Gerard noted that **Alan Stephens, Executive Director, County Supervisors Association** was present in support of the bill:

### **SB 1075 – children’s health insurance; hardship exceptions – DO PASS**

Ms. Brennan explained that SB 1075 requires the Director of the Department of Arizona Health Care Cost Containment System (AHCCCS) to adopt rules to grant a hardship exemption to families who are not able to pay the premiums for the children’s health insurance program (CHIP).

Senator Gerard asked if there were any estimates of cost. Ms. Brennan noted that between September 1999 to January 2001, 4,856 children were terminated for the nonpayment of these premiums. Successfully collecting that money would result in approximately \$80,000, three-fourths of which would go to the federal government.

Senator Solomon explained that is assuming that everyone who is disenrolled would benefit under the hardship exemption. She said she does not feel that would be the case.

Senator Nichols said that he knows how difficult it is to enroll children in CHIP. The state has already paid a penalty for nonenrollment through the loss of federal funds. He stressed that it would have only cost the state \$20,000 to pick up the 5,000 children that were lost.

Senator Cirillo said that he hopes when AHCCCS determines the rules for this program, it is not just for someone who says they cannot pay an insurance premium. He feels there should be some check and balance system in place.

Senator Solomon noted that she feels AHCCCS will come up with some rule that will identify a legitimate hardship.

Senator Nichols stated that he hopes that AHCCCS adopts very lax rules and regulations that anyone who says they cannot pay the insurance premiums will be deemed not able to pay. The cost of not insuring a child is so great, it seems to be in the best interest of the state to have all children insured.

**Senator Nichols moved SB 1075 be returned with a DO PASS recommendation.  
The motion CARRIED with a roll call vote of 8-0-0. (Attachment 3)**

Chairman Gerard noted the following were present in support of the bill: **Richard White; Barbara Burkholder, Executive Director, Arizona Public Health Association; Dr. Barbara Smith, Pediatrician, Arizona Chapter, American Academy of Pediatrics; Kathy Saile, Valley Interfaith Project; Diane Ross, Assistant Director, Member Services, AHCCCS; Sandy Junck, Children's Action Alliance; and Chris Herstam, Phoenix Children's Hospital, and United Way of Tucson,**

### **SB 1087 – children's health insurance; covered services – DO PASS AMENDED**

Ms. Brennan explained that SB 1087 expands the benefits package under CHIP and authorizes school districts to perform outreach and information activities related to CHIP. There are two amendments to the bill. The four-line Nichols amendment dated 01/18/01 at 11:20 a.m., allows the AHCCCS administration to contract with school district for outreach and information activities related to CHIP, while the five-line Nichols amendment dated 01/22/01 at 4:45 p.m., maintains the prohibition of school districts to contract with AHCCCS on the programs but leaves the new language to allow the school districts to perform outreach and information activities related to CHIP.

Senator Nichols noted that last year's bill said that the services not offered in Kids Care but offered in AHCCCS should be added to Kids Care. Since Arizona returned so much money to the federal government, these services should be expanded. The prohibition against outreach has had a chilling effect between AHCCCS and the schools. The other amendment removes the contracting issue.

Senator Gerard noted that when the original Kids Care was passed, some legislators did not want the children in the program to have better services than a state employee has. The foolishness of that is if they are already getting services through Kids Care and Behavioral Health and they need additional services, they end up using the state-only suspension dollars, which are 100% state dollars. If the same package of services were provided as the children receive in Medicaid, the federal government would pay two-thirds of the cost. For some reason the contracting issue is controversial. It could create an expectation in the community that AHCCCS contracts with the schools and gets paid for every application. There is no money in the budget to do that.

**Lynn Dunton, Assistant Director, Policy Office, AHCCCS**, suggested that the agency's preference would be to have the permissive language that the schools could perform outreach and informational activities.

Senator Cirillo asked if there is any fiscal note on this bill. Ms. Dunton said that the estimated revenue that they would have federal sharing would be \$339,000. Currently, the state is paying 100% of that amount. If this service were added, the state would only pay \$84,000. Therefore, the state would save money by adding behavioral health services because of the federal dollars that would be received. For the nonemergency transportation and vision services, the state's share of the cost would be approximately \$37,000 the first year and \$40,000 the second year.

Senator Nichols noted that this would be almost cost free to the state because of the transfer of federal dollars. Ms. Dunton replied that the state would be taking in more money than they will be spending.

Senator Solomon asked if there was another cost saving measure in regards to having the same program for CHIP children. Ms. Dunton responded that any time that they can align their programs would make them more administratively efficient.

**Sandy Junck, Children's Action Alliance**, indicated that they support the four-line Nichols amendment. She said that aspect of being able to have as much flexibility as possible is important for the Kids Care outreach program. There is nothing that makes this mandatory that AHCCCS must contract with schools, it only provides the possibility that if they want to, they can do so.

**Senator Nichols moved SB 1087 be returned with a DO PASS recommendation.**

**Senator Nichols moved his five-line amendment dated 01/22/01, 4:45 p.m. be ADOPTED. The motion CARRIED by voice vote. (Attachment I)**

**Senator Nichols moved SB1087 be returned with an AS AMENDED, DO PASS recommendation. The motion CARRIED with a roll call vote of 7-0-1. (Attachment 4)**

Chairman Gerard noted the following were present in support of the bill: **Richard White; Joseph W. Miller, EVI; Robert L. Bounton, Arizona Interfaith Network; Margaret Grannis, Shepherd of the Hills; Jan Holt, EVI; Frank A. Patzer, Shepherd of the Hills; Janice and Leonard Rayman, East Valley Interfaith Project; Diane Ross, Assistant Director, Member Services, AHCCCS; Beverly Rogers, Arizona Interfaith Network; Louis Grannis, Shepherd of the Hills; Ruth Brunton, Home Economist; David Landrith, Vice President, Arizona Medical Association; Phil Lopes, Executive Director, Arizona School-Based Health Council; Barbara Burkholder, Executive Director, Arizona Public Health Association; Betty Jane Rector, Arizona Interfaith Network; A. Carter Rogers, Arizona Interfaith Network; Sue Braga, Executive Director, American Academy of Pediatrics; Rory Hays, Attorney, Arizona Nurses Association; Margaret Grannis, Shepherd of the Hills; Karyl Engbarth, EVI; David Miller, CEO, Arizona Council of Human Service Providers; Debi Wells, Health Policy Advisor, Governor's Office; Bev Herleon, Behavioral Health Coalition of Southern Arizona; and Janice Palmer, Arizona School Boards Association.**

## **SB 1108 – mentally ill; disclosure of information – HELD**

Ms. Seeglitz noted that SB 1108 allows the Department of Public Safety (DPS) to access confidential mental health records to comply with statutes relating to concealed weapon permits and weapon background checks. There is a three-line Solomon amendment dated 01/23/01 at 9:03 a.m. that allows DPS to access confidential mental health records to comply with statutes relating to licensing security guards. Also, there is a three-line Hartley amendment dated 01/22/01 at 1:06 p.m., which specifies that DPS may access confidential mental health records for statutory purposes only for those who have been adjudicated mentally incompetent or have been involuntarily committed to a mental institution.

Senator Guenther wondered if someone could explain why it is only the persons that have been adjudicated and involuntarily committed. The bill as drafted involves concealed weapons permits and security guards. Senator Solomon responded that in the statute for security guards it specifies that they need to be adjudicated mentally incompetent or involuntarily committed to a mental institution. That is not in the statutes for concealed weapons permits or firearms background checks.

Senator Guenther said that even with a person that voluntarily enters a mental institution for treatment leaves without resolving the difficulty. Whether a person is a voluntarily committed bipolar with a gun or an involuntarily committed bipolar with a gun, the disorder is still there which effects how to use the authority.

**Mary Judge Ryan, Chief Deputy, Pima County Attorney's Office**, explained that they need the exception to the confidentiality that protects mental health proceedings so that existing law can be enforced. Currently, while concealed weapons permits can be revoked based on a mental illness and gun purchases can be denied, there is no way to get the information to the DPS database so that when a background check is done, the information is available. This became painfully aware in 1998 in Pima County when a person went on a shooting rampage, wounding five people and killing one. This person had been committed to Kino Community Hospital twice. Each time it was an involuntary commitment. None of that information was in the DPS database. The person who sold the gun did the required background check, but because of the confidentiality in existing statutes, none of the information could be entered into the DPS database.

Senator Gerard asked if this gives access to a person's entire record. Ms. Ryan said that this bill gives an exception to the confidentiality so that information can go to DPS. Senator Gerard noted that if someone has this type of commitment, there are massive records. Ms. Ryan replied that they need information regarding that the person was committed. Senator Gerard asked if that is all that someone would have access to. Ms. Ryan responded that is the intent.

Senator Guenther said that this information could only be used for applications for security guards and a person requesting a conceal weapons permit. Ms. Ryan added also for the purchase of a gun. Senator Guenther questioned that it could not be used for any other prosecution. Ms. Ryan said that is correct. What this talks about is that the information goes into the database for the enforcement of these statutes. If there is prosecution under those statutes, it could be used in those purposes.

Ms. Ryan indicated they are trying to ensure the protection of privacy of individuals. Certainly a person who voluntarily says they need help may be in a different status than a person who has to be adjudicated and committed by the legal system because they are a danger to themselves or others. Senator Guenther said that he thought the basis of the request was to protect the public with whom the security guards and concealed weapons carriers would interface. Ms. Ryan replied that is the

ultimate purpose of the bill. Senator Guenther said that he does not see the difference in allowing someone to handle a weapon whether they had sought voluntary treatment or had been involuntarily committed. The mental disorder provides the same risk. Ms. Ryan agreed and said that the assumption was that the person who must be involuntarily committed was a higher risk.

**Geraldine Anderson, Executive Director, Citizens of Arizona to Prevent Gun Violence**, stated that law enforcement is charged with running background checks for people who are applying for a concealed weapons permit and the purchases of guns. This bill provides a tool to allow law enforcement to do their job. A database is only as good as the data it contains. Easier and better access to these types of records is only going to improve the database and keep guns out of the hands of people who should not have them.

**Leslie Schwalbe, Deputy Director, DHS**, said that they are concerned about the bill because she is not sure what the County Attorney's Office is asking DHS to share with DPS. On the fact sheet it indicates that there is no cost to the state general fund. She said the Department is not automated and she is not sure how they would pull that information.

### **SB 1144 – health professions; definition – DO PASS AMENDED**

Mr. Bezozo explained that SB 1144 updates definitions relating to health care professions and expands the number of state health regulatory agencies that can obtain confidential mental health patient records for complaint investigations.

**Senator Cirillo moved SB 1144 be returned with a DO PASS recommendation.**

**Senator Cirillo moved the following verbal amendment to the bill:**

**Page 3, strike Lines 34 through 43; strike pages 4 and 5**

**The motion CARRIED by voice vote. (Attachment J)**

**Senator Cirillo moved SB 1144 be returned with an AS AMENDED, DO PASS recommendation. The motion CARRIED with a roll call vote of 7-0-1. (Attachment 5)**

Chairman Gerard noted that **Kathy Boyle, Executive Director, Arizona Pharmacy Association**, was present in support of the bill.

### **SB 1146 – AHCCCS; foster care providers – DO PASS**

Mr. Bezozo explained that SB 1146 authorizes the AHCCCS administration, or a subcontractor, to enforce standards for adult foster care providers serving Arizona Long Term Care System (ALTCS) members.

**Senator Cirillo moved SB 1146 be returned with a DO PASS recommendation. The motion CARRIED with a roll call vote of 7-0-1. (Attachment 6)**

Chairman Gerard noted the following were present in support of the bill: **Mary Wiley, Assistant Director, Department of Health Services; and Lynn Dunton, Assistant Director, AHCCCS.**

**SB 1148 – AHCCCS; behavioral health services – DO PASS AMENDED**

Mr. Bezozo explained that SB 1148 expands the types of settings provided under ALTCS and makes changes to the eligibility process and the grievance and appeals process for behavioral health clients.

**Senator Cirillo moved SB 1148 be returned with a DO PASS recommendation.**

**Senator Cirillo moved the five-line Gerard amendment dated 01/22/01, 10:53 a.m. be ADOPTED. The motion CARRIED by voice vote. (Attachment K)**

**Senator Cirillo moved SB 1148 be returned with an AS AMENDED, DO PASS recommendation. The motion CARRIED with a roll call vote of 6-0-2. (Attachment 7)**

Chairman Gerard noted the following were present in support of the bill: **Lynn Dunton, Assistant Director, AHCCCS; Leslie Schwalbe, DHS; Sue Braga, Executive Directors, American Academy of Pediatrics; and Dr. Barbara Smith, Pediatrician, Arizona Chapter, American Academy of Pediatrics.**

**SB 1147 – AHCCCS; transplants – HELD**

There being no further business, the meeting was adjourned at 4:18 p.m.

Respectfully submitted,

Carol Dager  
Committee Secretary

(Tapes and attachments on file in the Secretary of the Senate's Office/Resource Center, Room 115.)